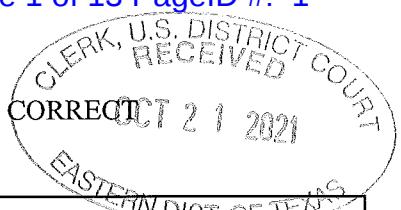


MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

|  |  |
|--|--|
| United States District Court                                   | District <b>EAST TEXAS</b>   |
| Name (under which you were convicted):<br><b>HEON JONG YOO</b> | Docket or Case No.:<br><b>6:18CR16 / 19-40465</b>                      |
| Place of Confinement:  | Prisoner No.:  |
| UNITED STATES OF AMERICA                                       | Movant (include name under which convicted)<br>V. <b>HEON JONG YOO</b> |

6:21CV415 JDK/KNM

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

**United States District Court at Eastern District of Texas  
Tyler Division**

(b) Criminal docket or case number (if you know): **6:18CR16.**

2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_

(b) Date of sentencing: **20190514 / 20201021**

3. Length of sentence: **97 months on 20190514, 41<sup>months</sup> on 20201021**

4. Nature of crime (all counts):

**18 USC § 922(g)(4) COUNT 8 (Reversed)**

**18 USC § 924(a)(1)(A) Count 1-7 (affirmed)**

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes

No

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8. Did you appeal from the judgment of conviction? Yes  No 

9. If you did appeal, answer the following:

(a) Name of court: 5<sup>th</sup> CIRCUIT.(b) Docket or case number (if you know): 19-40465(c) Result: Count 8 Reversed, Count 1-7 Affirmed.(d) Date of result (if you know): 2020/06/04(e) Citation to the case (if you know): 813 Fed. Appx. 949

(f) Grounds raised:

$$\left[ \begin{array}{l} 24(a)(1)(A) \\ 22(g)(4) \end{array} \right] \begin{array}{l} 1. \text{ Jurisdictional challenges to 924(a)(1)(A)} \\ 2. \text{ National of the US.} \\ 3. \text{ "Information Required to be kept" = Name, age, address} \end{array}$$

$$\left[ \begin{array}{l} 24(a)(1)(A) \\ 22(g)(4) \end{array} \right] \begin{array}{l} 4. \text{ Never been informed of the probation label properly} \\ 5. \text{ Never had a hearing, thus not adjudication nor commitment} \end{array}$$

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No 

If "Yes," answer the following:

(1) Docket or case number (if you know): 20-550(2) Result: Certiorari Denied(3) Date of result (if you know): 2020/12/07(4) Citation to the case (if you know): 141 S. Ct. 904

(5) Grounds raised:

$$\text{Same grounds above for 924(a)(1)(A), with a little more legal arguments to support my grounds. + I would not have been prosecuted for 924(a)(1)(A) charge w/o 922(g)(4) label against me.}$$

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No 

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

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(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE: Detention at County Jail w/o proper resources made it impossible for me to properly self-represent and litigate/ fight my case.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Confined to Smith County Jail 20180406 – 20180426  
Gregg County Jail 20180426 – 20190516.
2. County Jails were significantly below the minimum required standard.
3. The county jails ~~had~~ did not have law library.
4. It was impossible for me to authenticate documents, call proper witnesses, or ~~to~~ receive the due process guaranteed by the 5<sup>th</sup> and the 6<sup>th</sup> Amendments to ~~to~~ adequately fight my case.
5. Robert Schroeder never transferred me to a facility w/o a law library access upon decision to ~~to~~ keep me detained, as he promised on 20181010 hearing.
6. I was entitled to bail legally and factually, but fraudulently detained

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*My atty believed that this was a stronger case for 2255.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

and other legality, letter of the law

GROUND TWO: The statutes, caselaws, of 924(a)(1)(A) is vague, thus void for vagueness.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. ~~Information~~ What pertains to the "Information Required to be kept" is not clearly defined, and vague on 18 USC § 924(a)(1)(A).
2. The warning label and the instructions on the form 4473 are also not that clear.
3. Statutes and Courts could not agree on what "Information required to be kept" pertains to. (According to 18 USC § 922(b)(5) and (s)(1) they are name, age, and address)
4. Citizenship question ← is it information required to be kept pursuant to the statutes, case laws, and letter and spirit of the law?

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*Van Cleef believed this was better for Haibear, only the fact*  
*(c) Post-Conviction Proceedings: 424(a)(1)(A) pertains to name, age, address was raised.*

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE: Malicious, Vindictive, and selective prosecution, fruits from a "poisonous tree" doctrine, false imprisonment.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

1. I was fraudulently and maliciously labelled 922(g)(4). ~~§ 102(3)(B)~~
2. The record was transferred from Middlesex County Clerk. to the FBI NICS in violation of HEPA law.
3. FBI NICS not only failed to but also REFUSED to inform me of the such label to prevent me from challenging it, interfering with many aspects of my rights and life.
4. I would not have been prosecuted, if I had not been labelled as 924(a)(1)(A), which was the aggravating factor for 924(a)(1)(A).
5. The prosecutors, judges, ~~and~~ government agents, and even universities and colleges went ~~and~~ ~~and~~ even beyond their scope of duty to cooperate and prosecute me, ultimately to take away my right to bear arms.
6. Lucas Malicek Vindictively came on this case as the co-counsel for the US attorney after failing to prosecute me on the Smith Co. case for agg assault due to lack of evidence ~~to prosecute me on this case~~ — See attached page

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

Van Cleet was going to mention it partially but the Certiorari was denied.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

Continuation of Ground Three

7. Judges of all levels used “rubber stamp” doctrine against me, copying and pasting what Coan, Machicek, and Hagan said (5<sup>th</sup> Circuit Panel judge almost completely disregarded Van Cleef’s argument regarding the 18 USC § 924(a)(1)(A) charge and just copied and pasted what Hagan said.), even prosecuting from the bench.

8. Although the due process requirement for a hearing for a mental health commitment was clearly established under Addington v. Texas 441 US 418 US (1979) and 34 USC § 40911(c)(1)(C), Schroeder just agreed with Coan and Machicek and refused to acquit me.

9. The ATF unlawfully stole my firearms under “administrative forfeiture”, filing a search warrant application targeting my political views and then going through “administrative forfeiture” without notifying me. When I filed motions regarding it, Frank Coan lied over and over again stating that I was notified. Then ATF sent me another form to notify me and allowing me to challenge the forfeiture admitting that I never was notified, which then Coan changed his words stating “perhaps he did not receive due to transfer to Gregg County Jail.”

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR: Jury bias / Lack of impartial trial.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. East Texas local news coverage about me. Would have biased the jury.
2. Motion to change venue was denied at the last minute before trial.
3. My demand for a bench trial, despite the fact that the prosecution did not object to it, and despite ~~the~~ the case being purely legal matter, was denied.
4. Knowing that I am not a Christian, the court clerk made me swear in on the Christian God in front of jurors from a heavily Christian region. When I refused to swear on the Christian God, the jurors' perception of me deteriorated even further, to the best of my knowledge.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

*Van Cleet decided this would be a habeas matter.*

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

~~Offends~~ ~~Offends~~

Ground 3: ~~Offends~~ Preserved for habeas action.

Ground 2: Not raised on direct appeal, other than 924(a)(1)(A) does not pertain to citizenship question, but to name, age, and address.

(Ground 1 was used on 6:18cv635 to get transferred to a FDC or be released, ~~to~~  
Ground 4 was lightly touched on the certiorari petition.)

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

4:20 CV 665 : North TX case, 28 USC § 1361 mandamus case to compel

FBI to drop the 922(g)(4) entries against me.

6:20 CV 401 : Bivens action against USMS of East TX and Gregg County sheriff for detention.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

N/A

(b) At the arraignment and plea:

Kenneth Hawk on 20180406, Mick Mickelson on 20180423, Myself on 20180925

(c) At the trial:

Represented myself.

(d) At sentencing:

Represented myself.

(e) On appeal:

L. Charles Van Cleef.

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

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18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate / Overturn the conviction.

or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the ~~prison~~ mailing system on 2021-10-14.

International Year, (month, date, year)

Executed (signed) on 2021-10-14 (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.